

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1323

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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pg 5

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UNITED STATES OF AMERICA,
Plaintiff-Appellee,

: UNITED STATES DISTRICT
COURT OF THE SOUTHERN
DISTRICT OF NEW YORK.

-against-

: CASE NO. 75-1323

WYADELL EDMONDS,

: A P P E N D I X

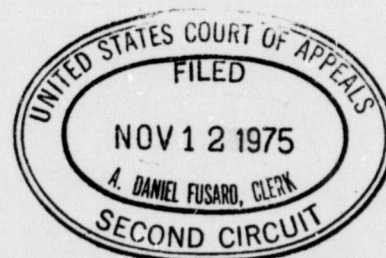
Defendant-Appellant
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ARK:jp

USA-33s-528 - IND/INF - POSSESSION WITH INTENT TO DIST. NARC DRUG
Rev. 5-27-72

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA :

-v- :

WYADELL EDMONDS, :

Defendant. :

----- X

INDICTMENT

74 Cr. 474

The Grand Jury charges:

On or about the 1st day of May, 1974

in the Southern District of New York,

WYADELL EDMONDS,

the defendant , unlawfully, intentionally and knowingly
did possess with intent to distribute, a Schedule I
narcotic drug controlled substance, to wit, approximately
eleven grams of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CURRAN
United States Attorney

JUDGE OWEN

74 CRIM. 474

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

vs.

Alan R. Kaufman, AUSA.

WYADELL EDMONDS

264-6433

ONLY COPY AVAILABLE

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

(07)		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk, JS3 - ✓					
Marshal,					
Attorney,					
CONFIDENTIAL 21					
CONFIDENTIAL 12,841(a)(1),(b)					
Distr. & possess. w/intent to distr.					
Heroin, I.					
(One Count)					

DATE

PROCEEDINGS

5-10-74	Filed indictment.
5-13-74	Deft.(atty. present) Produced summary . Pleads not guilty. Motions returned in 10 days. Bail previously fixed by Mag. continued.(\$5,000. cash or surety). Deft. continued remanded in lieu of bail. Case assigned to Judge Owen for all purposes. Gurfein, J.
5-22-74	DEFT. PRESENT WITH ATTY(Roland Thau Legal Aid) for Pre Trial Conference suppression hearing to be held on 6/10/74 at 10:00 a.m. in room 1505. Bail continued Deft. Remains Remanded. Owen J.
6-10-74	Suppression hearing adj. until June 20th, 1974 at 3:00 P.M. - Owen, J.

-over-

DATE	PROCEEDINGS	CLERK'S FEES		
		PLAINTIFF	DEFENDANT	
7-10-74	Suppression hearing held (deft. & atty. Roland Thau present). Hearing is adj. sine die.....Owen,J.			
8-23-74	Filed Govt's notice of readiness for trial on or after 9-24-74.			
8-29-74	Filed transcript of record of proceedings dated 7-10-74.			
9-10-74	Suppression hearing continued and concluded. Decision reserved. Bail continued.Owen,J.			
9-16-74	Filed OPINION #41171-Upon holding a suppression hearing the Court concludes that the informant was both reliable and credible, the arrest was lawful and the search seizure incident thereto was also lawful. Deft's. motion to suppress is denied. So Ordered.....Owen,J. (mailed notice).			
9-27-74	Pre-trial conference held. (Deft. not present). Trial date set for Nov. 18th, 1974 at 10:00 A.M.....Owen,J.			
10-2-74	Filed the following papers received from Magistrate Raby. (Mag.#74-558): Docket Entry Sheet Criminal Complaint, S.D.N.Y. Disposition Sheet Financial Affidavit Appointment of Counsel Temporary Commitment Appearance Bond in the sum of \$5,000.00-Public Service Mutual Insurance Company.			
10-16-74	Deft. present-with atty. Roland Thau. B/W Vacated. Bail Continued.....Owen,J.			
12-3-74	Deft. present for trial. Deft. asks that Roland Thau not represent him (deft.) Motion granted. Edmonds representing himself with Mr. Thau present to aid him if asked to by deft. Panel sworn & voir dire begun.			
12-4-74	Trial continued. (voir dire concluded). Jury sworn.			
12-5-74	Trial continued.			
12-6-74	Trial continued & Roland Thau now representing deft. at deft's. request & Court's direction. Jury begins deliberations until 11:00 P.M.			

-over- Continued on Page #3

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
12-9-74	Trial continued. Jury returns to continue deliberations. Hung Jury. Motion by deft's. counsel for mistrial is granted. Jury dismissed. To be re-tried on day uncertain at this time.....Owen, J.	
12-17-74	Filed transcript of record of proceedings dated 9-10-74.	
2-24-75	Filed transcript of record of proceedings dated December 5 through 9, 1974.	
3-3-75	Deft. present with legal aid attorney Roland Thau trial re-set for March 31st at 10:A.M. room 905- Bail continued..... Owen, J.	
4-1-75	Pre-trial conference held. Trial adj. sine dieOwen, J.	
4-7-75	Filed MEMORANDUM ORDER adjourning trial date until 4-21-75.....Owen, J. (mailed no	
5-1-75	Filed Govt's. affidavit for a writ of habeas corpus directed to Sheriff, Norfolk, Virginia, Writ issued, ret. 5-5-75.	
5-28-75	Filed transcript of record of proceedings dated 6-22-74.	
5-28-75	Filed transcript of record of proceedings dated 10-16-74.	
5-28-75	Filed transcript of record of proceedings dated 9-27-74.	
5-28-75	Filed transcript of record of proceedings dated 12-6-74.	
5-28-75	Filed transcript of record of proceedings dated 3-3-75.	
5-22-75	Trial adjourned until 5-27-75 at 10:30 AM.....Owen, J.	
5-27-75	Deft. present with attorney Kussler for trial. Jury empanelled & sworn...	
5-28-75	Deft. Produced on writ. Opening statements - Trial begun & continued. Writ adjourned until 5-29-75.	
5-29-75	Deft. produced on writ. Trial continued. Writ adjourned until 5-30-75.	
5-30-75	Deft. produced on writ. On deft's. motion he is removed from court room to cell block for remainder of trial. Trial continued & concluded. Verdict - Guilty as charged. Bail revoked. Pre-sentence investigation ordered. Sentence 7-9-75. Writ adjourned until sentence date of July 9th at 2:00 P.M.....Owen, J.	
6-20-75	Deft. in court with attorney Kessler on application for new court appointed counsel for sentencing July 9th at 2:00 P.M. application granted counsel to be appointed.Owen, J.	
7-8-75	Filed Defts. affidavit and notice of motion for an ordersuppressing all tangible property seized frm deft. :& U.S. Atty. make Sarah Robertson & Ronnie Evans available for interview. Ret. 5-19-75.	
7-8-75	Filed Affidavit by Lawrence W. Kessler in support of motion for a new trial.	
7-22-75	Filed transcript of record of proceedings dated 4-1-75.	
7-24-75	Filed deft's. affidavit & notice of motion for bail pending sentencing & appeal, to extend the time on which post trial motion may be had and for inspection of the pre-sentence investigation report, ret. 7-25-75.	

DATE	PROCEEDINGS	Date of Judgment
7-24-75	Filed MEMO ENDORSED on def't's. motion filed 7-24-75. Application for bail is denied. Return date for making post trial motions is extended to 8-18-75. Application for inspection of the pre-sentence investigation report is granted.Owen, J. (mailed notice)	
7-30-75	Filed transcript of record of proceedings dated 5-22-75.	
7-30-75	Filed transcript of record of proceedings dated May 27, 29, 30, 1975.	
8-5-75	Filed CJA Form 21 Copy 5 appointing D.C. Boone as investigator, dated 7-23-75.Owen, J.	
8-5-75	Filed CJA Form 21 Copy 2 approving payment to D.C. Boone, dated 7-23-75....Owen, J.	
8-5-75	Filed CJA Form 21 Copy 5 appointing Ascanio E. Radano as investigator, dated 7-23-75.Owen, J.	
8-18-75	Filed JUDGMENT & COMMITMENT (atty present) The def't. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS. Pursuant to provisions of Title 21, Section 841, U.S. Code, the def't. is placed on SPECIAL PAROLE for a term of (3) YEARS, to commence upon the expiration of his confinement.....Owen, J. Issued commitment 8-19-75.	
8-20-75	Filed def't's. Pro Se motion to dismiss the indictment.	
8-20-75	Filed MEMO END. on def't's. motion to dismiss the indictment. Motion denied according to the minutes of 8-18-75.....Owen, J. (notice mailed by Pro Se Clerk)	
8-20-75	Filed def't's. Pro Se motion to correct illegal sentence.	
8-20-75	Filed MEMO END. on def't's. motion to correct illegal sentence. Motion denied according to the minutes of 8-18-75.....Owen, J. (notice mailed by Pro Se Clerk)	
8-25-75	Filed def't's. notice of appeal from the judgment of conviction entered on 8-18-75 and MEMO ENDORSED. Def't's. application to proceed on appeal in forma pauperis is granted.....Owen, J. (copies mailed to W. Kirkland Taylor, 2580 7th Ave., N.Y.C. 10039 and U.S. Attorney's Office.)	
8-29-75	Filed def't's. pro se ancillary motion to correct illegal sentence.	
9-3-75	Filed transcript of record of proceedings dated 8-18-75.	
9-9-75	Filed def't's. 2nd ancillary motion in support of motion to reduce sentence.	
9-17-75	Filed def't's. pro se motion to withdraw appeal without prejudice.	
9-18-75	Filed writ of habeas corpus directed to Sheriff, Norfolk City Jail with marshal's return. Writ returned - Charges Nollled.	
9-23-75	Filed def't's. affidavit & notice of motion for reduction of sentence, ret. 9-26-75	

2 Kessler is a nice guy or I'm a nice guy, your duty is to look
3 at the evidence and to consider that evidence carefully, to
4 view it over, to look at it from every different direction
5 and say, "Is there really a reasonable doubt?" Not some
6 guess, not some twisting of what was said, but is there
7 really a reasonable doubt?

8 I submit to you on the record before you in this
9 case, there is no reasonable doubt and I ask you to return a
10 verdict of guilty.

11 THE COURT: The Court is about to charge the
12 jury. All spectators wishing to leave may do so now or remain
13 seated until the completion of the charge.

14 Mr. Marshal, please lock the door.

15 Now, ladies and gentlemen, we are at that stage
16 of the trial where you will soon undertake your final function
17 as jurors. As I said to you at the time you were chosen,
18 I'm sure, you will here be performing one of the most sacred
19 and valuable obligations of citizenship, which is to act as
20 ministers of justice in this case and to determine what the
21 facts are between these parties.

22 The fact that this trial was not of extremely
23 long duration does not mean that it is unimportant. Whether
24 it takes a day, a week or a month, every case is important.
25 This case is important to the government because the enforcement

of the criminal laws is a matter of prime concern to the community and to its welfare. Equally, it is important to the defendant, Mr. Edmonds, who is here charged with the commission of a serious crime.

Let me quickly add the fact that the government as a party entitles it to no greater nor any lesser consideration than that accorded to any other party to any litigation. All parties, government and individuals alike, stand as equals before this bar of justice.

Now, your final role is to decide and pass upon the fact issues here. You are the sole and the exclusive judges of those facts. You determine the weight of the evidence, you appraise the credibility of the witnesses, you draw whatever reasonable inferences may be warranted from the facts as you determine them and you resolve such conflicts as you may find in the evidence.

I shall later refer to how you may be assisted in determining the credibility or believability of witnesses.

My final function is to instruct you on the law, and it is your duty to accept these instructions on the law and apply them to the facts as you may find them.

With respect to any fact matter, it is your recollection and yours alone that governs.

2 As I have already mentioned, anything that any
3 lawyer either for the prosecution or the defense may have said
4 with respect to matters of evidence, whether during the
5 trial, in a question, in the opening in this case or in any
6 summation, is not to be substituted for your own recollection
7 of the evidence.

8 So, too, anything that I may have said during
9 the trial or may refer to during the course of these instruc-
10 tions as to any matter in evidence is not to be taken in
11 place of your own recollection.

12 Before we consider the precise charges, let us
13 turn to some preliminary matters.

14 There are certain principles of law that apply
15 in every criminal case and to which I made some reference,
16 I'm sure, at the time you were selected. I will repeat them
17 now.

18 The indictment is merely a piece of paper. It is
19 only a charge. It is no evidence or proof of the defendant's
20 guilt and no weight should be given whatsoever to the fact
21 that an indictment exists in this case.

22 The defendant has pleaded not guilty and, thus,
23 the government at all times has the burden of proving the
24 charges against him beyond a reasonable doubt. The defendant
25 does not have to prove his innocence. He does not have to

1 prove anything at all. On the contrary, he is presumed to
2 be innocent of the charges contained in the indictment. This
3 presumption of innocence was in his favor at the start of
4 the trial, it continued in his favor throughout the trial,
5 it is in his favor even as I instruct you and speak to you
6 at this very moment. It remains in his favor during the
7 course of your deliberations in the jury room. The presump-
8 tion of innocence is removed only if and only when you are
9 satisfied that the government has sustained its burden of
10 proving the guilt of the defendant beyond a reasonable doubt.
11

12 Now, the question that comes up is, what is a
13 reasonable doubt?

14 The words almost define themselves. That there
15 is a doubt founded in reason and arising out of the evidence
16 in the case, or the lack of evidence, as the case may be. It
17 is a doubt which a reasonable person has after weighing all
18 the evidence. A reasonable doubt is a doubt which applies
19 to your reason, to your judgment, your common sense and your
20 experience.

21 Reasonable doubt is not caprice, whim, speculation,
22 conjecture or suspicion. It is not an excuse to avoid the
23 performance of an unpleasant duty. It is not sympathy for
24 a defendant.

25 If, after a fair and impartial consideration of

2 all the evidence, you can candidly and honestly say that you
3 are not satisfied of the guilt of the defendant, that you do
4 not have an abiding conviction of the defendant's guilt, in
5 sum, if you have such doubt as would cause you as prudent
6 persons to hesitate before acting in matters of importance
7 to yourself, then you have a reasonable doubt, and in that
8 circumstance it is your duty to acquit.

9 If, on the other hand, after such an impartial
10 and fair consideration of all the evidence you can candidly
11 and honestly say that you do have an abiding conviction of the
12 defendant's guilt, such a conviction as you would be willing
13 to act upon in important and weighty matters in the personal
14 affairs of your own life, then you have no reasonable doubt
15 and under such circumstances it is your duty to convict.

16 One final word on this subject:

17 A reasonable doubt does not mean a positive
18 certainty or beyond all possible doubt. If that were the
19 case, few persons, however guilty, would be convicted. It is
20 practically impossible for a person to be absolutely and
21 completely convinced of any controverted fact which, by its
22 nature, cannot be proved with mathematical certainty.

23 In consequence, the law in a criminal case is
24 that it is sufficient if the guilt of a defendant is established
25 beyond a reasonable doubt, not beyond all possible doubt.

Against this general background let us turn to the specific law which it is charged the defendant here violated. Let me say parenthetically, we are not trying the subject of drugs generally, whether they are good or bad. You are here only to determine the guilt or innocence of this defendant on the specific charge against him.

Now, the specific law which it is charged the defendant here violated is provided by an act of Congress, which reads in part as follows:

"It shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance."

Under another section of the law, heroin is set forth as a controlled substance.

The act was enacted by Congress in an effort to combat the illegal importation, distribution, possession and improper use of narcotic drugs which have a substantial and detrimental effect upon the health and welfare of the American people.

Now let's turn to the indictment, which reads as follows:

"On or about the 1st day of May, 1974, in the Southern District of New York" -- and I charge you as a matter of law that Manhattan, which is the County of New York, is

2 within the Southern District of New York -- "Wyadell Edmonds,
3 the defendant, unlawfully, intentionally and knowingly did
4 possess with intent to distribute a Schedule I narcotic
5 drug controlled substance, to wit, approximately eleven grams
6 of heroin."

7 In order to find the defendant guilty, the
8 government must establish and you must conclude beyond a
9 reasonable doubt the following elements:

10 First, that on or about May 1, 1974, the
11 defendant possessed with intent to distribute a controlled
12 substance, in this case heroin.

13 Second, that he did so unlawfully, willfully and
14 knowingly.

15 And third, that the substance contained in Govern-
16 ment's Exhibit 1-B and 1-C are, in fact, a controlled sub-
17 stance, heroin.

18 Now let me say a few words about these elements:

19 The first element is possession with intent to
20 distribute. What does that mean?

21 The word "distribute" means to transfer the
22 heroin. The word "possess" has its common everyday meaning,
23 that is, to have something within your control. To have
24 something within your control does not necessarily mean you
25 have it in your hand or in your pocket. As long as it is under

your control you possess it. The word "intent" refers to a person's state of mind. So the term "possess with intent to distribute" can fairly be stated to mean to control an item with the state of mind or purpose or intention of transferring the item.

To elaborate on the term "possess," this means to have something within one's control, as I have said. To have something within one's control can be either physical or constructive. Actual physical custody meets this requirement, and, in this case, the government contends that the proof shows that the defendant had actual physical possession of the heroin when it was in the suitcase which he carried into the Port Authority terminal in New York City.

As you deliberate on possession with intent to distribute, I charge you that knowledge and intent, obviously, exist in one's mind. Since it is not possible to cut open a man's head and see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all of the facts and circumstances shown by the evidence in the case, including the exhibits, and determine from all those facts and circumstances whether the necessary knowledge and intent were present at the time, that is, did the defendant possess with intent to distribute heroin, if you should so find these other facts beyond a

2 reasonable doubt.

3 Direct proof of this is unnecessary. Knowledge
4 and intent may be inferred from all the surrounding circum-
5 stances, including statements the defendant made, if you
6 find that he, in fact, made them.

7 As far as intent is concerned, I instruct you
8 that a person is presumed to intend the natural and probable
9 or ordinary consequences of his acts.

10 As to the second element, the terms "unlawfully,"
11 "willfully," and "knowingly," those mean that you must be
12 satisfied beyond a reasonable doubt that Edmonds knew what
13 he was doing and that he did it deliberately and voluntarily
14 as opposed to being set up or mistaken or it being an accident
15 or some other cause.

16 Of course, it is not necessary for the government
17 to show that the defendant knew he was violating any particular
18 law, rather, it is sufficient if you are convinced beyond a
19 reasonable doubt that he was aware of the general unlawful
20 nature of his acts.

21 As to the third element, the indictment charges
22 that the narcotic drug controlled substance is heroin.

23 I instruct you as a matter of law that heroin is
24 a narcotic controlled substance. You, however, as the jury
25 must nevertheless find beyond a reasonable doubt that the sub-

2 stance here is, in fact, heroin before you are satisfied on
3 that item of the charge. There is a stipulation in evidence
4 from which the government urges that you can find that element.

5 In this connection, I would like to point out
6 that the indictment charges that the defendant possessed
7 approximately eleven grams of heroin.

8 Incidentally, you have a right to take this indict-
9 ment with you into the jury room if it is your desire.

10 The evidence in this case adduced by the government
11 was that the amount of heroin was, in fact, 8.4 grams.

12 It is necessary for you to be satisfied on
13 this element to find that there was this amount of heroin,
14 that is, 8.4 grams, and if you are satisfied of that beyond
15 a reasonable doubt, then I charge you that the difference
16 between the 8.4 grams and the 11 grams charged in the indictment
17 is what is called an immaterial variance.

18 Now, the parties have well and fully argued
19 before you and perhaps to give a little focusing of your
20 attention I am going to recite what their contentions are so
21 that you may have them clearly in mind.

22 The government contends that Edmonds was carrying
23 heroin to Virginia intending to sell it there. The government
24 contends it has proved his guilt beyond a reasonable doubt.
25 The government contends it has proved this by, among other

things, the testimony of agents who say they saw him come into the Port Authority terminal with a suitcase, that it was in his hand at the time of his arrest and that later heroin was found in it upon inspection at the Drug Enforcement headquarters.

The government contends that Mr. Edmonds' knowledge that this heroin was in this suitcase is proved by such statements as, "Let her go, she knows nothing about it," and other statements which have been argued to you.

The government contends that it has proved that the defendant possessed this heroin with intent to distribute it by at least two things:

First, the fact that there were these cutting agents in the suitcase along with the heroin, which, in the narcotics trade, have a use in reducing heroin in its purity to get it down to a street level for sale and, second, the government contends that the statements of Mr. Edmonds to Mr. Christian as to which Mr. Christian testified at or around the time of the trip to Norfolk were proof of Mr. Edmonds knowing he was going and his acknowledgements later that he had been arrested for this and, thirdly, the government contends that the statement in the tape recording about going to Virginia to make money is proof that Mr. Edmonds knew that the heroin was in there and that he possessed it

1 gt/lf

2 with intent to sell.

3 On this and other evidence, the government
4 contends that it has proven its case to you beyond a reason-
5 able doubt.

6 Now, the defendant has denied all of this. He
7 contends that the evidence against him consisted of, one,
8 the uncorroborated testimony of Mr. Christian that he had
9 recorded and unrecorded conversations with Mr. Edmonds and
10 that the voice on the tape is Mr. Edmonds.

11 Second, Mr. Edmonds contends that the testimony
12 of the police officers that Mr. Edmonds had a valise in which
13 the drugs were found and that he made incriminating statements
14 is not to be credited, that that testimony is replete with
15 contradictions and it includes, the defendant contends, an
16 admission of a false statement under oath.

17 The defendant contends that this testimony is
18 not sufficient proof beyond a reasonable doubt. The conten-
19 tion is the testimony of Mr. Christian is both riddled with
20 incredible statements and motivated by the desire to escape
21 a lengthy jail sentence. The defendant contends that Mr.
22 Christian's testimony is not truthful. The contention is
23 that without his testimony there is no identification of the
24 voice heard on the tape as that of Mr. Christian.

25 The defendant contends that the testimony of the

1 gt/lf

2 police officers is dependent upon the statements of an unknown
3 informant as to Mr. Edmonds' knowledge that the drugs were
4 in the suitcase containing the possessions of two people, and
5 the defendant contends that Mr. Edmonds' supposed admissions
6 are not to be found in the police reports and are contradicted
7 by other officers.

8 These are the defendant's contentions.

9 I have not made any extensive reference to the
10 evidence in this case. I have not done this because the
11 trial has not been very extensive and the attorneys have
12 made good and full reference to it in their summations and
13 I'm sure it is fresh in your mind. But I do want to say
14 that all the evidence in this case, whether referred to or
15 not by me or by anybody else, or the lack of evidence, as
16 the case may be, is important for you to consider and must
17 be considered by you.

18 You are called upon, as I say, to decide the
19 fact issues, that is, what happened.

20 One issue you may have to decide along the way
21 is that of the credibility or believability of witnesses
22 which you have heard.

23 Your determination on this issue must largely
24 depend on the impression that a particular witness or
25 witnesses made upon you, whether the witness was telling you

the truth or giving you an accurate version of what occurred.

As I said at the beginning, when you walk into this courtroom and you take a seat in this jury box, you do not leave your common sense or your experience in the hallway, so you apply that in deciding whether or not a witness was straightforward and truthful, whether the witness attempted to conceal something, whether the witness had a motive to testify falsely, whether there was any reason why a witness might color his testimony.

The defendant has argued that Mr. Christian had such a motive to testify falsely. Has he testified falsely? That is for you to decide.

A witness may be inaccurate, may be contradictory or even untruthful in some respect and yet be entirely believable in the essentials of his testimony.

The ultimate question for you to decide in passing upon the believability of any witness or witnesses is, did the witness tell the truth here before you as to essential, material, important matters?

It is for you to say whether a witness at this trial was truthful in whole or in part in the light of his demeanor and all the evidence in the case.

If you find that any witness testified falsely as to any material fact, you have the right to reject that

2 witness' testimony in its entirety, or you may accept that
3 part or portion of it which commends itself to your belief
4 and reject the rest. You may accept that part or portion
5 which you may find is corroborated by other evidence in the
6 case.

7 In addition to the testimony of Mr. Christian,
8 who is the principle source of proof of a conversation
9 in January, 1975, in an apartment at 101 West 136th Street,
10 there is also in evidence a tape recording which Mr. Christian
11 says was made of that meeting. There is also a transcript
12 that has been prepared of that tape recording which you have
13 seen.

14 In this connection, I charge you that the tape
15 recording itself is the actual evidence and that the transcript
16 is merely an aid to you as the jury in listening to the tape.
17 It is not evidence itself, the tape is the evidence to be
18 considered.

19 The defendant, Mr. Edmonds, has not testified
20 here, and I want to say as forcefully as I can that this is
21 his absolute right, and in respect to any such election not
22 to testify, nothing may be considered by you as to that
23 election, nothing may be considered by you thereby as any
24 evidence against him. You must not permit that fact to
25 enter into your thoughts, your deliberations or your discussions

2 in the slightest degree, nor should you, in the slightest
3 degree, give any consideration to the matter of the defendant
4 breaking into his counsel's summation to you. Put that
5 incident entirely from your minds. Do not consider it,
6 do not discuss it.

7 Now, to convict, you must find that the government
8 has proven the essential elements of the charge here, each
9 of the three, beyond a reasonable doubt.

10 If the government has proved the essential
11 elements, your verdict should be guilty. If it has not, your
12 verdict should be not guilty.

13 Your function is to weigh the evidence and
14 determine the guilt or innocence of the defendant solely upon
15 the basis of the evidence or such lack of it as you may
16 find appropriate and upon these instructions on the law.

17 Under your oath as jurors you cannot and should
18 not and must not allow any consideration of any sentence
19 which may be imposed upon the defendant, if convicted, to
20 enter into your deliberations in any way or to influence your
21 verdict in any way. Your duty, ladies and gentlemen, is
22 solely to decide this case upon the evidence. In the event
23 of a conviction, the duty of imposing sentence rests
24 solely with the Court.

25 Each juror is entitled to his or her own opinion.

2 Each should, however, exchange views with fellow jurors.
3 That is what jury deliberation is all about. You should dis-
4 cuss and consider the evidence, listen to the arguments of
5 fellow jurors, present your individual views, consult with
6 one another and reach an agreement based solely and wholly
7 upon the evidence.

8 You should not hesitate to change an opinion
9 which, after discussion with your fellow jurors, appears
10 to you to be erroneous. However, if, after carefully consider-
11 ing all the evidence, all the arguments of your fellow jurors,
12 you entertain a conscientious and honest belief that differs
13 from the others, you are not to yield that belief simply
14 because you are outnumbered or outweighed. Your final vote
15 must reflect your conscientious conviction as to how the
16 issue should be decided.

17 Finally, to record a verdict, it must be unanimous.
18 That concludes my charge on the law, ladies and
19 gentlemen.

20 Do you have any matters you would like to bring
21 to my attention?

22 MR. SEAR: Yes, your Honor.

23 THE COURT: All right. Just stay in place for a
24 moment.

25 We will retire to the robing room.

(In the Robing Room - counsel present)

MR. SEAR: Just a brief comment that the jury be told that they can take the evidence, other than the drugs, into the jury room and with reference to the tape recording they can come out and hear it if they want to.

THE COURT: All right.

MR. SEAR: With the drugs, your Honor, it would specifically be that they could look at them.

THE COURT: All right.

Mr. Kessler?

MR. KESSLER: Nothing, your Honor.

(In open court - jury present)

THE COURT: Ladies and gentlemen, just one final observation.

You may, of course, call for the exhibits should you desire them and you may do that by sending a note. You will be in the custody of the marshal and, Madam Forelady, you give the marshal a note and tell him what it is you want.

If you want to examine exhibits 1-B and 1-C, which are the brown packages, or you want to hear the tape recording, let us know that and we will cause you to be assembled here for that purpose.

With those instructions, at this point, Miss Hays and Mrs. Mitchell, we have come to the point where I

2 must excuse you from further service as alternate jurors.
3 I want to thank you for your careful attention. You are
4 excused.

5 (Two alternate jurors excused)

6 (A marshal was duly sworn by the Clerk of the
7 Court.)

8 (At 2:40 p.m., the jury left the courtroom to
9 deliberate upon a verdict.)

10 THE COURT: We haven't got all that many exhibits,
11 but I would suggest all except Exhibit 1-B and C be given to
12 the clerk and as they are called for they can be sent right
13 in.

14 MR. KESSLER: Your Honor, there is the matter of
15 screening the part of A-1 that is not in evidence.

16 THE COURT: Yes. How about Mr. Sear taking a
17 pair of scissors and cutting that out and just stapling
18 on a blank back.

19 MR. SEAR: I think that would be much easier to
20 do, your Honor, than finding a Xerox machine.

21 THE COURT: Let us do that.

22 (At 4:30 p.m., in open court; jury present)

23 THE COURT: I have a note, Exhibit 6, which says
24 that you have reached a verdict.

25 THE FORELADY: Yes, we have, your Honor.

2 THE COURT: What is your verdict?

3 THE FORELADY: Your Honor, we, the members of
4 the jury, find the defendant guilty.

5 THE COURT: All right.

6 Will you poll the jury.

7 THE CLERK: Members of the jury, you say you
8 find the defendant guilty, and so say you all.

9 (Each juror, upon being asked, "Is that your
10 verdict?" answered in the affirmative.)

11 THE COURT: Mr. Kessler, have you anything you
12 would like to ask me before I discharge the jury?

13 MR. KESSLER: No, your Honor.

14 THE COURT: Very good.

15 Ladies and gentlemen, I want to thank you for you
16 jury service and I want to thank you for the careful attention
17 I noticed you gave to the proof as it was going in.

18 In my judgment on this record, your verdict was
19 eminently justified, and I trust you will take satisfaction
20 in the service that you performed.

21 You are excused with my thanks.

22 (Jury Excused)

23 THE COURT: I am going to revoke bail as things
24 presently exist, and I will order a presentence report here.

25 You may have until the date of sentence to make

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motions, Mr. Kessler, if you are of a mind to.

MR. KESSLER: Your Honor, it seems to me that at this point the question of my continued representation of Mr. Edmonds should be addressed.

I can understand why the Court wished me to continue the rest of the summation, but since Mr. Edmonds has clearly declined to talk to me, I think that the question of whether I can continue to represent him at sentence is a serious matter.

I will endeavor to talk to him if the Court wishes once more and see what his desires are, but --

THE COURT: I would appreciate it if you would do that.

He is in the marshal's pen. I think it might be a good idea if you can go down there now and advise him that the jury has found him guilty and what does he have in mind to do.

MR. KESSLER: I will do that, your Honor.

THE COURT: I would appreciate it if you would let me know in some fashion, either by letter or personally, however is convenient to you.

MR. KESSLER: I will do that.

THE COURT: Off the record.

(Discussion off the record)

2 THE COURT: For sentencing, is sometime in the
3 week of the 6th of July a good week? Is everybody here?

4 I am leaving on the 12th.

5 MR. KESSLER: I will be here, your Honor.

6 THE COURT: You will be here.

7 The 11th is the last day and is a bad day.

8 Suppose we are to make it at two o'clock on the
9 9th.

10 MR. SEAR: I believe I will be here, your Honor,
11 so that will be fine.

12 THE COURT: All right, two o'clock on the 9th
13 of July, and I will order a presentence report. We will be
14 in courtroom 501.

15 As I say, bail is revoked.

16 I trust somebody will communicate that to West
17 Street.

18 MR. SEAR: Yes, your Honor, I will take care of
19 that.

20 THE COURT: All right.

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Horace Dalton Balmer (Resumed)	28	52 300		
William J. Frawley	113	121	127	128
Jerome J. Christian	129	155	213 239	237
James Steinberg	239	247		
Francis Michael Dunham	270	291		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
8		121
9	144	148
<u>Defendant</u>		
A	157	
A-1	158	198
A-2	188	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

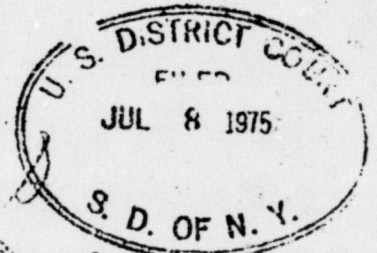
WYADELL EDMUNDS,

Defendant.

AFFIDAVIT IN SUPPORT OF
MOTION FOR A NEW TRIAL

74 CR 474 RO

STATE OF NEW YORK)
COUNTY OF NASSAU)ss.:



LAWRENCE W. KESSLER, being duly sworn, deposes and says:

I was assigned by the Hon. Richard Owens, on May 12, 1975 to represent WYADELL EDMUNDS, the defendant in the above-captioned criminal case.

In preparing for the trial of his case, I felt that it was necessary to have Sarah Roberts available as a potential witness for the defendant since it was possible that she might have been the informant and might therefore have had information useful to the defendant concerning the manner in which the narcotic drug found in his suitcase upon his arrest came to be there.

Upon the order of Judge Owen, Assistant United States Attorney Sear provided the last address known to him or the officers of the Drug Enforcement Agency Task Force who were involved in this case. That address was no longer being occupied by Sarah Roberts.

I then engaged two investigators to locate Sarah Roberts. They located her and served her with a subpoena.

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On May 29, 1975, Sarah Roberts appeared at the United States Courthouse and I interviewed her to determine whether her testimony might be useful to the defendant.

At that time she said that she had been sentenced to probation prior to April 30, 1974; that she was at Ms. Summers' home on April 30, 1974, but that she had not informed upon Mr. Edmunds nor given information to anyone who did so inform.

She also said that she had been substantially involved in the business of selling drugs prior to her arrest and sentence; that she knew many people involved in that business and if she were to have been an informant would have been able to give information about people much more heavily involved than Mr. Edmunds; that Mr. Edmunds was "small potatoes" in the drug world, and that she "spoke for him" (meaning that she made it possible for him to obtain possession of illegal drugs).

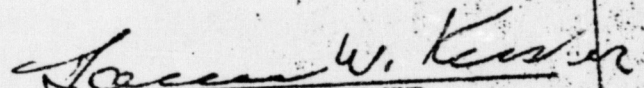
Since Detective Bahner had previously testified that the informant who gave information to him about Mr. Edmunds had not yet been sentenced on April 30, 1974, I concluded that if his testimony was truthful she could not be the informant. I therefore did not call her and convinced Mr. Edmunds to accept my determination.

I, thus, was never able to investigate Mr. Edmunds' contention that the government informant and thereby the government had induced this crime by the creative activity of supplying the contraband. If Sarah Roberts had been the informant, her admitted role in supplying Mr. Edmunds with these drugs--a role which her admitted presence on April 30, 1974 suggests might have in fact been much greater--would have been extremely relevant to this defense. If she had brought

the drug with her from her residence in Cambria Heights, Queens to Mr. Edmunds in Manhattan (Note: 1-Why else did she make that trip? 2-According to the testimony of Jerome Christian "Jr." had been "holding up" Mr. Edmunds, thus indicating that the drugs were received very close to, if not on, the date of his arrest) and then told Detective Bahner to arrest him, the creative activity specifically described as prohibited in, United States v. Mosley, 496 F. 2d 1012, 1016 (5th Cir. 1974).

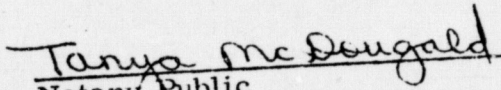
"...[T]hat a defendant, where entrapment is an issue, may be acquitted for lack of pre-disposition, or, even though disposed, where the undercover agent supplies him with the contraband."

WHEREFORE, the defendant moves for a new trial and the revelation of the name of the informant.


LAWRENCE W. KESSLER

Sworn to before me this

18th day of June, 1975.


Notary Public

NOTARY PUBLIC
JUNE 18 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

TCN 474

-against-

HON. R. OWENS, D. J.

WYADELL EDMUNDS,

NOTICE OF MOTION

Defendant.

PLEASE TAKE NOTICE, that upon the annexed affidavit of
LAWRENCE W. KESSLER, attorney for the defendant in the above-captioned
criminal case, upon the indictment and all papers filed and proceedings held
herein, heretofore, will move this Court, before the HON. RICHARD
OWENS, D. J., at 9:30 a.m. on May 19, 1975, at the United States District
Courthouse for the Southern District of New York, Room , Foley
Square, New York, New York 10007, for an order:

1. suppressing all tangible property seized from the defendant at
the time of his arrest;
2. requiring the United States Attorney to make SARAH
ROBERTSON and RONNIE EVANS available for interview by counsel and as
witnesses at trial, and/or to make available the informant herein, and
3. for such other and further relief as may seem proper.

Dated: May 18, 1975.

Respectfully submitted,

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LAWRENCE W. KESSLER
Hofstra Law School
Hempstead, New York 11550
(516) 550-2334

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

7CR 474

-against-

WYDELL EDMUNDS,

AFFIDAVIT

Defendant.
-----X

STATE OF NEW YORK)
COUNTY OF NASSAU)ss.:

I, LAWRENCE M. KESSELEN, being duly sworn, deposes and
says:

I am the attorney for WYDELL EDMUNDS, the defendant in
the above-captioned criminal case by appointment of the Hon. Richard Owens,
D.J., on May 12, 1973, under the Criminal Justice Act, and make all state-
ments herein under information and belief unless otherwise indicated.

a) Motion to Suppress.

On July 10, 1974, and September 10, 1974, a hearing on a motion
to suppress was held, and said motion was thereafter denied.

At that hearing, the sole factor creating probable cause for the
arrest and search of the defendant, was the testimony of Detective Horace
D. Bahner that the arrest was made upon partially corroborated information
supplied by a reliable informant.

Thus, crucial to the constitutionality of the search, was the
question of the reliability of the informant. Spinelli v. U.S., 393 US 410
(1969), Aguilar v. Texas, 378 US 198 (1964). Detective Lahner established
the reliability of the informer herein by his uncorroborated testimony that
the informant had supplied information leading to five previous purchases

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and three previous seizures of narcotics (Transcript, July 10, 1974, p.9-- hereinafter to be referred to as "T.I. "). The truthfulness of his testimony on this issue was the major issue of fact before the court on the suppression motion. Neither the informant nor other officials testified to substantiate the existence of an informant. The name of the informant was never revealed. Thus, his testimony and the validity of the search and arrest stand on the credibility of Detective Bahner.

Subsequent to the hearing and previous trial in this case, counsel came into possession of the sworn statement of a police officer which is in conflict with the testimony of Detective Bahner. Detective Bahner testified as follows:

"Q. And of this information previously supplied to you by this confidential informant, previous to April 30th, did such information include a tip concerning the defendant Ayadell Edmunds?...

A. Yes." T.I. - p.11....

"THE WITNESS: We relayed this information over to the Drug Enforcement Administration in Norfolk, Virginia, who relayed the information to the Police Department there.

THE COURT: And what happened with regard to seeing this man at or about the time of the expected arrival? Did that come to pass....

THE WITNESS: Yes. I wasn't involved in the investigation once it reached Norfolk, Virginia, but I was told by the Drug Enforcement Agent there that the defendant, Ayadell Edmunds, was arrested, I believe in a Holiday Inn Hotel or Motel in the---"

T.I. - p.12

He thus clearly alleges that the same informant -- known to him in his capacity as an investigator in New York -- gave him this information. This fact is the only investigable statement made by the witness concerning the informant. No other names of defendants, that the informant allegedly

identified, were given.

In a sworn statement, dated March 23, 1974, before the Justice of the Peace in Norfolk, Virginia, Officer C. J. Morgante stated that a search warrant should be issued because he had material facts constituting probable cause:

"From an informant who in the past has given me information leading to the arrest of other persons involved in the drug scene, states to me that at the Holiday Inn...
(emphasis added---see Appendix A for the complete statement of Officer Morgante)

The conflict between this statement and that of Detective Bahner is twofold. First, whether the informant gave the information to Bahner or Morgante. Second, whether the informant gave information in the past to Bahner or Morgante. This conflict casts doubt upon the testimony of Detective Bahner that the informant previously gave information to him. It casts doubt upon his testimony that the informant had supplied him information in the past. Since no other statement made by the Detective is verifiable, this conflict must be given heavy weight.

When an officer of the law testifies that information comes from an informant and then refuses to reveal the identity of the informant, the possibility of abuse is great. The statement of secret information is not subject to meaningful cross-examination. The judgment to permit such testimony is made only after balancing the constitutional rights of a criminal defendant against the needs of law enforcement. McCray v. Illinois, 386 U.S. 300 (1967); United States v. Commissiong, 429 F.2d 334 (2 Cir., 1970).

The crucial factor is the existence of a safeguard against fabrication. Commissiong, at p. 339.

When the testimony of the police officer is questioned, as it must be here, it should not be permitted to stand. 3

The danger of fabrication is particularly great when the defendant is known to law enforcement officials, for his physical identity can be so easily stated and used as supposed corroboration of the informant. It is interesting to note that in the trial of this case, the figure of the defendant was so familiar to the officers that he was recognized at from 50 to 60 feet. (Transcript of trial, December 5, 1974, p. 113 -- hereinafter to be called "T. 3."). It must be assumed that such ready identification indicates prior familiarity and thus knowledge of his description cannot support the alleged informant as it did in Draper v. U.S., 358 U.S. 307 (1959). Of course, all of the allegations concerning what the informer said and its supposed corroboration rest upon the now questioned testimony of Detective Bahner. The sworn statement that an informant gave information to Officer Morgante about this defendant and apparently did not give it to Detective Bahner, as was his testimony, compels the questioning of the rest of his testimony about this very informer.

This new evidence therefore mandates the suppression of the evidence seized.

b) Production of Witnesses.

At both the suppression hearing and trial defendant requested the production for interview of the undercover informant. On both occasions the motion was denied.

Two factors require the granting of this motion, despite the above determinations.

1) The first is the existence of the above-described evidence questioning the veracity of Detective Bahner. The constitutional restriction upon the government's privilege to conceal the identity of informants is a "voucher against fabrication." Comissiong, at p. 839.

The voucher can only be the credibility of the officer--government witness. Once that is breached by evidence of fabrication, the privilege vanishes. Detective Bahner's credibility has been seriously questioned on the vital issue of his prior relationship with the informant. His testimony by itself is no longer, "a sufficient voucher" within the meaning of Comissalong.

In bringing forth evidence of fabrication, the defendant has met an almost insurmountable burden. No names, dates or places were revealed by the witness to provide a basis for investigation. To deny production of the informant after this proffer of proof by the defendant would be to grant a license to the police to fabricate at will. With the law protecting the informant's identity, with all facts surrounding prior transactions with the informant sealed as likely to point to his identity, no greater evidence of fabrication could be produced. Of course, a directly conflicting statement of fact as herein alleged is strong evidence. The informant should be produced.

2) The second is that the defendant states, that if there were drugs in his possession and if there was an informant, that Sarah Robertson is the source of any illegal drugs that are alleged to have been found in his possession, that she packed the bag in which the illegal items were allegedly found, that he was not present during this packing, and that he now believes that she is working for the government after having been arrested on narcotic charges along with her common law husband Ronnie Evans.

The present whereabouts of these two alleged witnesses are unknown to the defendant. If known to the government, both Brady v. Maryland, 373 U.S. 83 (1963) and Roviano v. United States, 353 U.S. 53 (1957) require their production.

The allegation that this informant procured the illegal substances and placed them without the defendant's knowledge or consent into his possession converts Sarah Robertson, whether the informant or not, into a potentially valuable witness. Her location must therefore be revealed and/or she must be produced for interview.

The authority cited by the government supporting the request that production of the informant be denied is rendered inapposite by the identification of the identity and role of the informant in the substantive criminal act. Rugendorf v. United States, 376 U.S. 528 (1964) distinguishes Reviaro and permits nondisclosure only when the informant had not, "played a direct and prominent part, as the sole participant with the accused, in the very offense for which the latter was convicted" at p. 534.

Here it is alleged that Sarah Robertson procured the narcotics, planted them on the defendant and then either informed or had her paramour Ronnie Evans inform the officials of defendant's possession. Thus, these informers had a vital role in the crime and they must be produced.

WHEREFORE, the defendant moves for the suppression of all items seized from him and the production of the informer Sarah Robertson and Ronnie Evans or others for interview by counsel and testimony at trial.

LAWRENCE W. KESSLER

Sworn to before me this

16th day of May, 1975.

Notary Public

AFFIDAVIT FOR SEARCH WARRANT

Exhibit A

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to wit:BEFORE ME, Frank W. Munn, JUSTICE OF THE PEACE OFTHE CITY AFORESAID, THIS DAY APPEARED C. J. Magistrate

A POLICE OFFICER, AND MADE AFFIDAVIT AS FOLLOWS:

(1) SUBSTANTIALLY THE OFFENSE IN RELATION TO WHICH SEARCH IS TO
BE MADE: 60-54-584-101, 2 &cPoss. of Heroin(2) THE MATERIAL FACTS CONSTITUTING PROBABLE CAUSE FOR ISSUANCE
OF THE SEARCH WARRANT:

from an informant who in the past
has given me information leading to
the arrest of other persons involved
in who doing work, states to me
that at the Holiday Inn Scope Room
148, there are 2 B/F and 1 B/W
from New York. He states he has
been to this man & women apartment
and has observed Heroin, the informant
is a user of Heroin, he states the
girls names are Sara & Lisa.
over

(3) WHAT IS TO BE SEARCHED FOR UNDER THE SEARCH WARRANT:

Heroin

(4) THE PLACE TO BE SEARCHED:

Holiday Inn Scope
Norfolk Room 148C. J. Magistrate
ATTEST

SUBSCRIBED AND SWORN TO BEFORE ME,

Frank W. Munn
Signature - Justice of the Peace

-CORR- TESTE: HUGH E. STOVALL, CLERK-

BY: G. M. Munn, D.C.1:20 pm
TIME3-23-74
THIS DATE

Based on this information and knowing
 my informant I believe that there
 is presently Heroin at the above
 address, the address in the front of
 this Search warrant. Immediate
 entry is requested for the
 above address (front). Immediate
 entry is necessary due to easy
 disposal of the drugs.

Holiday Inn Scope, Room No. 143
 Filed: March 28, 1974 2:30 p.m.

Hugh J. Stovall, Clerk
 U.S. District Court, D.C.

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COPY RECEIVED
NOV 10 1975
THOMAS J. CAHILL
U. S. ATTORNEY
SO. DIST. OF N. Y.